''(A) the penalty for a single violation shall not be less than a 60-day disqualification of the driver's commercial driver's license; and

''(B) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of such a law or regulation shall be subject to a civil penalty of not more than $10,000.''.

(b) DEADLINE.—The initial regulations required under section 31310(h) of title 49, United States Code, shall be issued not later than one year after the date of enactment of this Act.

(c) STATE REGULATIONS.—Section 31311(a) of title 49, United States Code, is amended by adding at the end the following new paragraph:

''(18) GRADE-CROSSING REGULATIONS.—The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(h) of this title.''.

SEC. 305. SAFETY ENFORCEMENT.

(a) COOPERATION BETWEEN FEDERAL AND STATE AGENCIES.—The National Highway Traffic Safety Administration, and the Office of Motor Carriers within the Federal Highway Administration, shall on a continuing basis cooperate and work with the National Association of Governors' Highway Safety Representatives, the Commercial Vehicle Safety Alliance, and Operation Lifesaver, Inc., to improve compliance with and enforcement of laws and regulations pertaining to railroad-highway grade crossings.

(b) REPORT.—The Secretary of Transportation shall submit a report to Congress by January 1, 1996, indicating (1) how the Department worked with the above mentioned entities to improve the awareness of the highway and commercial vehicle safety and law enforcement communities of regulations and safety challenges at railroad-highway grade crossings, and (2) how resources are being allocated to better address these challenges and enforce such regulations.

SEC. 306. CROSSING ELIMINATION; STATEWIDE CROSSING FREEZE.

(a) STATEMENT OF POLICY.—

(1) Railroad-highway grade crossings present inherent hazards to the safety of railroad operations and to the safety of persons using those crossings. It is in the public interest—

(A) to eliminate redundant and high risk railroad-highway grade crossings; and

(B) to limit the creation of new crossings to the minimum necessary to provide for the reasonable mobility of the American people and their property, including emergency access.

(2) Elimination of redundant and high-risk railroad-highway grade crossings is necessary to permit optimum use of available funds to improve the safety of remaining crossings, including funds provided under Federal law.

(3) Effective programs to reduce the number of unneeded railroad-highway grade crossings, and to close those crossings that cannot be made reasonably safe (due to reasons of topography, angles of intersection, etc.), require the partnership of Federal, State, and local officials and agencies, and affected railroads.

(4) Promotion of a balanced national transportation system requires that highway planning specifically take into consideration the interface between highways and the national railroad system.

(b) PARTNERSHIP AND OVERSIGHT.—The Secretary shall foster a partnership among Federal, State, and local transportation officials and agencies to reduce the number of railroad-highway grade crossings and to improve safety at remaining crossings. The Secretary shall make provisions for periodic review to ensure that each State (including State subdivisions and local governments) is making substantial, continued progress toward achievement of the purposes of this section.

(c) CROSSING FREEZE.—If, upon review, and after opportunity for a hearing, the Secretary determines that a State or political subdivision thereof has failed to make substantial, continued progress toward achievement of the purposes of this section, then the Secretary shall impose a limit on the maximum number of public railroad-highway grade crossings in that State. The limitation imposed by the Secretary under this subsection shall remain in effect until the State demonstrates compliance with the requirements of this section. In addition, the Secretary may, for a period of not more than 3 years after such a determination, require compliance with specific numeric targets for net reductions in the number of railroad-highway grade crossings (including specification of hazard categories with which such crossings are associated).

(d) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out this section.

Mr. CHAFEE. Mr. President, I move to reconsider the vote.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PRIVATE SECURITIES LITIGATION REFORM ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I now propound a unanimous consent request that Senator GRAMS, who has been waiting for several hours now, be permitted to put in his opening statement, Senator BOXER her opening statement, and that then we go to Senator SHELBY for the purposes of submitting his amendment on proportional liability that we have already agreed to vote on at 10:55. So I propound that as a unanimous consent request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. D'AMATO. I thank the Chair.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I rise in support of S. 240, the Private Securities Litigation Reform Act of 1995.

As we all know, the United States is facing a litigation crisis. Piles of new and often frivolous lawsuits are being filed every day in our Nation's courtrooms, bottling up our judicial system and crowding out those suits which have merit and demand justice.

Already, the Senate has addressed the problems in our product liability laws and debated the issue of medical malpractice reform.

But few areas of our tort system deserve and require as comprehensive a review as the field of securities litigation.

Let me briefly describe the problem. For years, a small number of attorneys have made it their life's work to bring class-action lawsuits against companies whose stock values—for one reason or another—have fallen.

These so-called strike suits are rarely filed with any evidence of fraud or wrongdoing—in fact, they are often filed simply with the knowledge that the value of a stock has dropped.

This is possible because of the implied right of action developed by the courts under rule 10(b)–5 of the Securities Act of 1934. Because Congress has failed to limit this right of action through statute, it is relatively simple for attorneys to file frivolous cases and harass defendants under these judge-made rules.

Even worse, these attorneys rarely serve any real injured class of investors. Instead, they use professional plaintiffs who buy nominal amounts of stock, simply to serve as the pawns of an expensive chess match.

Due to the costly array of litigation expenses, such as extensive discovery, defendants will often choose to settle cases, rather than bring them to a final judgment in court.

In addition, under joint and several liability, plaintiffs' attorneys can bring secondary defendants, such as accountants, directors, and others, into these cases and force them to settle as well.

These settlements are often too small to benefit the alleged class of injured investors. But they are not too small to make a healthy living for an attorney who is motivated solely by profit, not justice.

To call this the practice of law would be inaccurate. It is more appropriately called legal blackmail or extortion, and it is happening every day, at the expense of job providers, workers, and consumers.

S. 240 addresses this problem by placing some important limitations on the implied right of action in rule 10(b)–5.

By helping put the brakes on the attorneys' race to the courthouse, this legislation would make it easier for defendants to protect themselves from frivolous ''strike'' suits, encourage voluntary disclosure of information from issuers of stock to potential investors, and reduce the cost of raising capital which is so necessary for jobs creation.

It includes a number of important provisions, including tougher pleading requirements for securities fraud actions, mandatory sanctions for attorneys who file needless litigation, and restrictions on windfall recoveries for plaintiffs who profit from a rebound in the market after an alleged fraud.

I am also pleased that S. 240 reforms the rules governing secondary defendants. This measure establishes a two-tiered system which allows most parties to be held proportionately liable only for the percentage of damages attributable to their actions; in other words, it puts an end to the practice of ''deep pockets'' litigation.

Mr. President, this legislation is not a perfect bill. There are many of us who believe it should do more.

We could, for example, have a stronger safe harbor protection for forward-looking statements or a ''loser pays'' provisions similar to the bill passed by the House. Today, however, we cannot let the perfect be the envy of the good.

Likewise, there will be attempts made to weaken this bill—efforts which I urge my colleagues to reject. In particular, I hope this body will resist any attempt to extend the statute of limitations already found in law. If our purpose is to reduce frivolous litigation and protect consumers from higher prices, any such effort must be rejected.

There are some critics of the bill who suggest that this legislation is bad for the average American.

Well, Mr. President, tell that to the innocent defendant who's forced to settle for millions of dollars simply because of one crafty lawyer, tell it to the worker who was laid off because his employer had to pay attorneys' fees instead of his salary, tell it to the consumer who has to pay higher prices for everyday products simply because of the cost of frivolous litigation.

And most importantly, tell it to the hard-working, honest attorneys who watch the public image of their profession being stomped into the ground by a few quick change artists. They are the ones who suffer because of the abuses in our current system. They are the ones who need our help.

By voting for this legislation, we will take an important step forward in helping reduce the cost of frivolous litigation, litigation which robs job providers the opportunity to buy new equipment for plant safety, provide higher pay and better benefits for employees, and to create new jobs.

And that hurts average, hard-working, middle-class Americans—my kids and yours.

For their sake—in the name of justice—we must pass this important measure to fix our badly broken tort system. I, tonight, urge my colleagues to join me in this effort and to vote for S. 240.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Thank you very much, Mr. President. I know it has been a very long and hard day for many of us. Some of us felt very strongly about Dr. Foster, and we had a tough day on that one. Some of us had our bases closed, and it has been awfully difficult sometimes to face disappointments like this.

But here we are, it is 9:20 and we have a bill before us that is very important. I want to speak to this bill and as I told the chairman, my friend, I will do it as quickly as I can, but I wanted to cover some of the important issues that we face.

I speak to this bill not only as a Senator from California but as a former stockbroker, a former stockbroker will understand the sacred responsibility of recommending investments to people who need those investments to be sound. I can tell you, in those days, if I invested in a stock for an elderly person, I literally worried a lot about them, and if things turned around, I was very quick to get on the phone and talk with them about it. I took this responsibility very seriously, and most stockbrokers do.

But there are those broker-dealers, investment advisers, and others who do not take their responsibilities as seriously as they should. So I think it is very important, in light of Orange County—and those were my constituents who were left holding the bag because there were some broker-dealers who were more than dishonest, unscrupulous, and they had done it before and they continued to do it. I want to make sure that investors are protected.

When the debate opened on S. 240, we heard a great deal of discussion by its proponents about companies who were being sued unfairly. No one, Mr. President, should be sued unfairly. The vast majority of businesses are decent, are good, and they do not deserve frivolous lawsuits. Those frivolous lawsuits should be stopped. I am ready to stop them. They do happen. But as my friend from Nevada, Senator BRYAN, said, let us not use the issue of frivolous lawsuits to take this legislation so far that it hurts legitimate plaintiffs, legitimate lawyers. We do not want to stop decent people in their tracks, innocent investors. We do not want them to be stuck or ruined. We do not want them, in some cases, frankly, to be financially destroyed because we are writing a law that perhaps goes too far.

Our colleague from Nevada showed us very clearly that there is no explosion of these investor lawsuits. Indeed, it is extraordinary. They have remained very level—the same number now as we saw 20 years ago. That does not mean they are all perfect lawsuits. Some of them are frivolous. But the fact is we have no explosion here, and that has been clearly stated by my friend from Nevada.

We need to approach this bill from our own experience. I want to say that this is a very complicated issue. I want to say to those who may be watching this debate, it may be complicated, but it could easily affect you. It is just like the S&L crisis, when the Congress acted to deregulate and walked away. It was a complicated bill. People did not follow it, and then they got burned. So we have to be very careful.

I have met the victims of Charles Keating. I talked about that with my friend from Nevada. I met the victims from the Orange County bankruptcy, and I say to them that I do not intend to forget them as we go through this bill. I want to try to make this bill better. I will support it and perhaps offer amendments to do that. I want to make sure investors are not shut out of the courtroom. That is not the American way. That is what motivates me.

I want to tell a little bit about this bill by way of some charts that I have. I want to show you what newspapers have been saying about this bill, S. 240. There are many people who take it to the floor and they have extolled this bill in its current form. They like it. Many of them have worked very hard on it and they are very close to it. I want you to see what some of the newspapers are saying about S. 240.

The Palm Beach Post of June 5, 1995:

Congress has set out to help stop market con artists. Congress is creating legislation that would virtually strip the rights of defrauded investors—the bill installs heat shields around white collar crooks and brokers or accountants who aid and abet their scams. Investors who know the legislation do not like it.

This is Jane BRYANt Quinn from Newsweek. She is an advocate for investors, and she says:

S. 240 makes it easier for corporations and stockbrokers to mislead investors. Class action suits against deceivers would be costly for small investors to file and incredibly difficult to win.

How about the Seattle Times, May 29, 1995, a month ago. They say this, and so many colleagues have embraced this, and some say it does not go far enough:

This legislation has proceeded almost unnoticed because it is hideously complicated, and there may be a feeling it does not touch many lives. Wrong. Taxpayers have a vital stake in these changes. Longstanding protections are in jeopardy.

The Raleigh, NC, News and Observer:

S. 240 is bad news for investors, private and public. It would tie victims in legal knots while immunizing white-collar crooks against having to pay for their misdeeds.

The Philadelphia Inquirer, in June 1995:

A crook is a crook, and S. 240 would relax penalties for many stock crooks.

The St. Louis Post Dispatch, May 1995:

Don't protect securities fraud.

The Contra Costa Times in my home State:

Why would any Member of Congress vote to protect those involved in fraud at the expense of investors?

That is a reasonable question.

The Seattle Post Intelligencer:

The legislation is opposed by the U.S. Conference of Mayors, the Government Finance Officers Association, the American Association of Retired Persons, and the North American Securities Administrators Association.

Mr. SARBANES. Will the Senator yield?

Mrs. BOXER. Yes, I am happy to.

Mr. SARBANES. Not only is that a diverse group from which you just cited, the U.S. Conference of Mayors, the Government Finance Officers Association, the American Association of Retired Persons, and the North American Securities Administrators Association. Now, none of those groups has a vested interest, so to speak, in this conflict.

I understand that you have the trial lawyers who have a vested interest and the corporations who have a vested interest, and they are at one another,

and they are at sort of loggerheads over this thing. One makes one set of assertions and the other makes another set of assertions.

Everyone whom you cited there—as did the Senator from Nevada earlier in the debate, who listed additional organizations as well—all of whom are sort of outside the fray, they are coming and taking an outside, objective look at this thing. They have reached the judgment that this legislation is deficient. We are not getting outside groups reaching the judgment that the legislation, as is, is OK. The outside groups that say it is OK are players in the legislation. There are groups that say it is bad who are also players. But these are all organizations, in effect, that represent the public interest, the consumer. We have a whole list of consumer organizations as well. I think it is very important. I think Members really have to stop and think about this, because we are getting the same thing out of the editorial boards of the newspapers around the country. Overwhelmingly, those editorial boards are critical of this legislation.

They see it goes too far. Most write editorials and say there are some bad practices that need to be corrected, but this legislation goes well beyond that and overreaches.

I appreciate the Senator yielding. I think it is a very important point. None of those organizations have a vested interest in this conflict, unlike many other groups that do have such an interest.

Mrs. BOXER. I thank my colleague, the ranking member of the full committee, for his statements.

I would say what we are doing here is just showing what the one newspaper is quoted as saying. There is a list of many, many pages, and I will at some point in this debate go further into it.

My friend is so right. So many consumer groups oppose this: Consumer Federation of America, Consumers for Civil Justice, Consumers Union, the Fraternal Order of Police oppose this. Why? Because they are worried about their retirement. They do not want some scam artist to get away with it.

As this debate moves forward, we will go more and more into the groups who oppose this legislation.

I am going to ask for the next series of charts which show who are the main targets of investor fraud. We talk about the companies, and believe me, I want to help the good companies. I do not want to help the companies that defraud investors. I think we need to look at who the targets are.

This is an article that appeared in the New York Times in May of this year, a month ago. ''If the Hair is Gray, Con Artists See Green, the Elderly are Prime Targets.''

When we talk about changing security laws that protect investors, we need to step back and look at who the targets are, who are the ones most likely to get hurt if we weaken these laws too much.

Let me read a little bit:

Betty Norman was no match for the telephone con men who emptied her pockets of more than $40,000.

A plain-talking widow who runs a small motel in Michigan, a town of State prisons and apple orchards, Mrs. Norman, born and raised here, was taught to believe that people are essentially honest. So she trusted salespeople who picked up details about her life in seemingly casual telephone chats while pitching her pens, costume jewelry and other trinkets. After being swindled out of thousands of dollars, she lost even more to people promising to recover her original investments.

Now, this is what Mrs. Norman says:

''It makes you feel like taking your life, to think you you've been skinned,'' said Mrs. Norman, 68, who for months was too mortified to reveal it to her grown children. ''I've been struggling along. People here have lent me money and I'm trying to get it paid back.''

So, we are seeing that—whether it is selling goods to the elderly or selling them investments—clearly, the elderly are the prime targets.

Now, I want to show something that I think is extraordinary. It is really something that ought to go to the Smithsonian. It is actually one Charles Keating gave to his salespeople when they were trying to con innocent senior citizens. I know that every single Senator, from both parties, would be sick if they took a look at this.

You are now a trainee for Charles Keating, and they blow up this paper. Here is what it says. They want to get someone to write a check for $20,000 to Charles Keating's company, American Continental Corp., in care of Lincoln Savings & Loan. You remember Lincoln Savings & Loan, right?

Here is the training document for the salespeople. To show how cruel these people are, how awful they are, this is the name they put, the fictitious name: Edna Gert Snidlip, 1 Geriatric Way, Retiredville, California, account number. And they are trying to get this sample elderly person to write a check for $20,000. This is the way they think of senior citizens.

I will show what they said on another piece of paper that we have blown up, another document that shows what they handed out.

At the very end, number 13, and these are all the things they have to think about, ''Always remember, the weak, meek, and ignorant, are always good targets.''

Now, what we have to do as we look at S. 240 is make sure that it passes the Keating test. Can we get a crook like Charles Keating, if we weaken our securities laws too much?

What the Senator from Maryland, Senator SARBANES, is trying to do, and the Senator from Nevada is trying to do, and the Senator from Alabama, and this Senator, and I hope others, we are trying to fix S. 240, so we do not allow these charlatans, these crooks, these criminals, to target elderly people, to go after the weak, the meek, and the ignorant as targets, and get away with it.

Remember, the Senator from Nevada, who was a prosecutor, has said if S. 240 had been the law of the land, the people who were conned by Charles Keating would not have recovered what they have now recovered. It is about 40 to 60 percent of their losses.

Mr. SARBANES. Is that an instruction sheet they gave to their salesmen?

Mrs. BOXER. This is an instruction sheet they gave to their salespeople, exactly. This was in the period of discovery, when the attorneys went in to make their case against Charles Keating, they were able to come up with these documents which are on file at the court. We took them out.

I thought it shows the people of America that there are, sad to say, bad people, bad people who will try to get the elderly to make investments that are no good.

As the Senator knows, the Keating case, they led people to believe that their investments were, in fact, insured by the Federal Government, and people lost everything.

Mr. D'AMATO. Might I make an inquiry?

Mrs. BOXER. Certainly.

Mr. D'AMATO. I understand the horrible and the terrible things that were done to these people, the unscrupulous tactics that were used, but I ask what the relevance of insider trading is to the legislative proposal that we have before us.

This legislation does not deal with insider trading. Insider trading remains completely banned. There are other existing sections of the securities law which deals with insider trading. We do not make it any easier for insider trading to occur.

The fact is that this bill does not protect fraudulent conduct. It absolutely does not.

If you knowingly advertise falsely, you will be in violation of this bill, the safe harbor does not protect these false statements nor does it apply to ITO's or to small emerging companies. Also, the Securities Exchange Commission will still have the authority to bring any suit that it can bring today.

When we bring up the name of Charles Keating, and the terrible things that his salespeople were trained to do, we imply that this legislation will allow this kind of conduct. This legislation will not sanction that kind of conduct.

Mrs. BOXER. And I respond to my friend that we are changing the laws that protected the people who were conned by Charles Keating.

The fact of the matter is, Charles Keating ripped off the assets of the savings and loan, went bankrupt, and these poor people who were left with nothing had to go after other people. And in this bill you make it far more difficult. That is why Senator SHELBY is offering an amendment on this.

Mr. D'AMATO addressed the Chair.

Mrs. BOXER. The other point—I would like to just finish my point because my friend raised two issues. My

colleague is asking me about insider trading. The Senator is exactly right.

Mr. D'AMATO. Does the Senator know what fraud provisions we are changing? I would like to know. If she can point out to me a particular provision that will permit fraud, then I want to strike it. You say we have changed the law without identifying what section we have changed and allude to the practices of somebody we all agree was contemptible but his actions are not relevant. If you can point it out these provisions I would be delighted to review them.

The comment that we will make it possible for people to engage in fraudulent conduct and wipe away the protections that now exist, is not, in my opinion, square with the facts.

Mrs. BOXER. I would like to respond to my friend very clearly. I am making an opening statement tonight. I told my friend, I will be supporting amendments to make this bill better; amendments that will not leave people prey to people like Charles Keating. The Senator wants to know specifically? You can talk about the safe harbor. We are going to do that. I was happy to hear my friend from Connecticut saying maybe he will have a little change there. We welcome that. We are going to look at pleadings. And on insider trading, which we are going to talk about, the bill is silent about it. That is my problem.

Mr. D'AMATO. But this legislation does not deal with insider trading. Insider trading provisions are as vigilant and tough as ever. If there are constructive suggestions to make insider trading laws more effective, to appropriately protect defrauded people, we should certainly consider them. But this bill, as it does not address insider trading.

Mrs. BOXER. That is my point.

Mr. D'AMATO. To suggest that this bill will somehow make it easier for insider trading, because that is the implication when you cite Charles Keating and his misdeeds, that somehow we are going to make it easier for these people to prey on the elderly to is not true. I might just make one observation, this bill does, makes it possible for those who are truly aggrieved, not the entrepreneurial lawyer, to bring suit against violators and to receive their fair share of the settlement money.

It allows the institutional investors and the pension managers who are at risk, whose clients are at risk, to have the opportunity to manage a lawsuit, instead of giving this control to lawyers who have no concern for the defrauded investors. These lawyers do not give two hoots and a holler about the stockholders, and walk off with millions of dollars in settlement fees when the stockholders get a penny or 2 pennies per share. I suggest to the Senator that this bill helps pensioners, who hold $4.5 trillion in securities, by giving them the authority to choose the lawyers who control the suits. It gives them the ability to agree to a settlement as opposed to a charlatan, who owns 10 shares of stock and now is employed by lawyers.

That is what we tried to do with this legislation. I point this out because as I listen to my colleague's statement it sounds to me like this legislation will open a door for the Charles Keatings, this is just not accurate.

Mrs. BOXER. If I could just reclaim my time—and I will yield in a moment—I really need to say to my friend from New York: He may not agree with me, but to stand there and say that it —and my friend is a good debater—it is unequivocal that pensioners are better off—you should see the people who oppose your bill.

It seems to me—

Mr. D'AMATO. I know the people who oppose the bill.

Mrs. BOXER. Let me read the list: American Association of Community Colleges, American Association of Retired Persons, American Council on Education, American Federation of State, County and Municipal Employees, the Association of the Bar of the City of New York, the Association of Community College Trustees, the Association of Governing Boards of Universities and Colleges. It goes on. The Consumer Federation of America. Et cetera, et cetera.

I just read before—the Senator was not on the floor—some incredible, incredible editorials that have been written across this Nation by people who have no vested interest at all.

How about the Investors Rights Association of America? How about the Municipal Treasurers Association of the United States and Canada?

My friend has to, I hope, leave a little bit of room for dissension here. I know the bill was voted out overwhelmingly. But in the course of this debate I am going to be supporting amendments and perhaps offering some that are going to improve this bill. Because I do not agree with my friend. I do not agree with my friend that investors are better protected. I will be happy to yield to my friend from Maryland who sought to engage in a colloquy.

Mr. SARBANES. I would say to the distinguished Senator from New York, on the morning of the markup of this bill in the committee, the Chairman of the Securities and Exchange Commission wrote to us and stressed that the substitute committee print failed to adhere to his belief that a safe harbor should never protect fraudulent statements. This is what he said:

I continue to have serious concerns about the safe harbor fraud exclusion as it relates to the stringent standard of proof that must be satisfied before a private plaintiff can prevail. As Chairman of the Securities and Exchange Commission, I cannot embrace proposals which allow willful fraud to receive the benefit of safe harbor protection. The scienter standard in the amendment may be so high as to preclude all but the most obvious frauds.

That is not me talking. That is me quoting the Chairman of the Securities and Exchange Commission. He expressing very deep concern about the safe harbor provision in this legislation. So there is a very direct answer to the Senator from New York.

Second, we offered in the committee an aiding-and-abettingamendment. Earlier in the debate the distinguished Senator from Nevada pointed out about half of the recovery in the Keating case that helped these elderly citizens who had been swindled to get at least some of their money back, about half of the money they got back was because they were able to move against aiders and abettors.

There is no aider and abettor provision in this legislation for private litigants—which is, of course, how they were able to proceed in order to get their money back. And later there will be an amendment offered to provide aider and abettor liability in private actions.

So there again, unless we get that provision in, the ability that people who have been swindled in the Keating matter had to recover at least some of their losses would otherwise not be available to them.

So I say to my friend from California, there are two very clear examples to support the proposition she was just arguing.

I thank the Senator for yielding.

Mr. DODD. May I make a comment?

Mrs. BOXER. Without losing my right to the floor, and briefly, I yield to my friend.

Mr. DODD. I thank my colleague from California.

Mr. President, we are dealing here with apples and oranges. Talking about the Keating case has the desired effect because people recall what happened to innocent investors. But under the Keating situation we were talking about a failure of the bank regulatory system. Here we are talking about securities laws, two entirely different areas of the law.

What Mr. Keating and his cohorts were charged with was not violation of fraud and forward-looking statements, they lied to them about present facts. That is a vastly different situation. No safe harbor provisions were necessary in the Keating case, because he told those people, in these absolutely ridiculous and outrageous statements and instructions, that ''your money is being guaranteed. You are protected.'' It was not forward looking, he was lying about the present situation.

What the safe harbor provisions deal with are forward-looking statements, entirely different fact situations than existed in the Keating case.

I want to go into that at some length and I will later on, on this, but that is a very different fact situation than what we are talking about here.

Last, I just make this one point.

One of the major provisions of S. 240 has to deal with the requirement that we have the auditors reach out. Look, this is a provision that was added by Congressman WYDEN on the House side

who for years had 30 hearings on this provision which we have incorporated in this bill. Had that provision, by the way—one provision of this bill that does apply to Keating—had the auditors been required to seek out the fraud which does not exist on the books, that is the one area, I would argue, in S. 240 that might have made a difference in the Keating case.

What we have done with this bill is add a new requirement that auditors must do that. That would have assisted in the prosecution of Mr. Keating. That is a part of this bill. But forward-looking statements and lying about present facts are very different, and safe harbor would not have applied.

I thank my colleague for yielding.

Mrs. BOXER. I am happy to yield.

I say it is my understanding—and we are going to debate this—that it is not as clear as the Senator made it. We are going to bring that out as we move forward in this debate.

My friend from New York says insider trading is not in this bill; exactly my point. I would like to see us connect insider trading to these forward-looking statements. And I want to explain what I am talking about. We know insider trading. ''It's back, but with a new cast of characters.'' That is Business Week. That is December 1994.

I want to quote from a book written by Gene Marcial, ''The Secrets of Wall Street'':

> Don't kid yourselves: Very little has changed on Wall Street. Half a dozen years after the scandals of the 1980's, when any number of Street veterans were charged with violations of securities laws and several high-profile insiders were marched off to jail, insider trading and market manipulation—in cases 100 percent illegal—are still the most zealously desired play in the financial world. It's almost the only way to make the truly big bucks. All the market savvy in the world will come up short if you're playing against other investors who have market savvy plus inside information: Sorry, but that is the way the game is played.

How does that fit into this bill? What this bill does not address is forward-looking statements made in combination with insider trading.

Let me show you what I mean. Here is a forward-looking statement. Crazy Eddie. Some of you may remember a business run by a crook. Here comes the forward-looking statement.

> We are confident that our market penetration can grow appreciably . . .
>
> Glowing evidence of consumer acceptance of the Crazy Eddie ''Name'' augurs well for continuing growth outside of New York . . .

All during the time of this forward-looking statement, Crazy Eddie and his friends are unloading the stock, and they are unloading it at a high point. And after awhile, just a little bit later, you see this forward-looking statement was fraudulent and the top officer flees the country with millions of dollars, and the CEO is convicted of fraud.

So my point, I say to my friends—and what I tried to do in the committee, but we could not get agreement at that time, I am hoping we can get an agreement—is to make a point that, if you have a forward-looking statement in connection with insider trades, in other words, you can show—because, by the way, the insider trades are definitely recorded with the SEC, fortunately; some have 40 days to do it; I would like to make it 5 business days—if you can show that there is a forward-looking statement in connection with an insider trade, that you meet the heightened Keating requirement and you cannot take advantage of the safe harbor. My understanding is that if we made that change, it would be very helpful to this bill.

Mr. DODD. Will my colleague yield?

Mrs. BOXER. Sure.

Mr. DODD. As I see the fact situation here, in the Crazy Eddie case, these are knowingly false statements that were made. The provisions of S. 240 are fine. My point is that the insider trading laws are on the books. Frankly, if you have some new ideas on insider trading—we do not cover cattle rustling in this bill either. It does not mean it may not be important.

Mrs. BOXER. May not be important?

Mr. DODD. My point is you have very good laws today. We wrote some laws on insider trading which I dealt with in our committee a few years ago. But the implication here is somehow that Crazy Eddie would have gone scot-free if S. 240 were the law of the land.

Mrs. BOXER. No.

Mr. DODD. The Senator is not suggesting that, is she?

Mrs. BOXER. No. I would like to explain it before my friend gets too agitated. Let me explain it to my friend.

What I am suggesting—and I tried to explain it to my friends in the committee, but no one was interested in talking about it. I am trying to explain it now. The Senator is right. He made clearly false statements. But he might get away with it under the new safe harbor because it is a more difficult standard to meet. What we are saying is that, if you can show, going into the case, unequivocally that in connection and conjunction with a false statement, a forward-looking statement, there is insider trading, you do not have to meet the requirements of the new safe harbor, and you do not have to meet the pleadings requirement because what we are really saying is here ipso facto, if you are unloading a stock the day after you make a phony statement, that should meet the heightened requirement.

Mr. DODD. Is there anything that you believe—we now know in this case there were knowingly false statements that were made. Is there anything in S. 240 that would in any way make it possible for a Crazy Eddie to have gone scot-free?

Mrs. BOXER. Yes.

Mr. DODD. Why?

Mrs. BOXER. Because the safe harbor is quite different the way it is written in S. 240, and it would be much more difficult for investors to move against this particular company.

Mr. DODD. S. 240 says knowingly false statements.

Mrs. BOXER. I know. But it is a much higher level. You have to know the intent and all the rest.

All we are saying is in cases of insider trading—I hope my friends can go along with this because I think it is good law; that is, ipso facto, if you can show that there is insider trading in connection with a forward-looking statement, that you meet the new safe harbor and the pleading requirements. That is all we are suggesting.

We will be offering that amendment. I hope we can have some support. I think it makes a lot of sense.

I want to say something about the laws that deal with insider trading. I hope my friends can help me on this because I think we all want to go after the bad people. I know we do.

Mr. SARBANES. Will the Senator yield?

Mrs. BOXER. Yes.

Mr. SARBANES. I say to the Senator from Connecticut, I cannot give a definitive answer to his question because there has not been a court interpretation of the standard that you had put in this bill, the safe harbor. But it is clear that under this standard, that Crazy Eddie was held to a standard that was not as stringent as the standard you have written into this legislation. That is clear. There is no argument about that. The standard by which Crazy Eddie was held under the existing law was a less stringent standard than the standard the Senator has written into this bill, because his standard—he says it is knowingly made with the expectation, purpose, and actual intent of misleading investors, and, of course, the Chairman of the SEC indicated he was fearful that this would allow willful fraud and still enjoy the benefit of safe harbor protection.

The other thing, I say to my friend, because I wanted to make this point earlier, is that I do think that the insider trading issue is more related to this bill by far than cattle rustling, if I may state that to my colleague, because, as I understand it, his effort was to counter my good friend from California to say, ''Well, you know, what has insider trading got to do with this bill? What does cattle rustling have to do with this bill?'' I think there is a difference between insider trading as it relates to this kind of legislation and cattle rustling.

Mr. DODD. I think my colleague from Maryland fully understood the point I was making on this. Yes, there is a different standard we are applying here. But the implication of using Crazy Eddie as an example I think is wrong.

But, second, what we are trying to do here is to minimize the kind of frivolous litigation where some people have a position that there should be no safe harbor, that we should do away with safe harbor altogether. I disagree with that. I think you can make a case for that.

But the idea of arguing, on the one hand, that we ought to have a safe harbor, and, second, making it so transparent that anyone can bring a lawsuit based on any kind of forward-looking statement is going against the trend of the balance we are trying to strike here where you have companies withholding information, pulling back, fearful that anything they say, no matter how well intended, becomes the automatic subject of a litigation when stocks fluctuate.

So we are trying to strike that balance, if I might just say to my colleague from Maryland.

Mr. SARBANES. If I could bring my dear friend back into the parameters, no one that I know of out here has argued that there should be no safe harbor whatever, which is the statement the Senator just made.

Mr. DODD. I said some may. I do not know.

Mr. SARBANES. It is a red herring. It is a diversionary thing.

Mr. DODD. Crazy Eddie is a red herring.

Mr. SARBANES. We are trying to get at what is a proper approach on the safe harbor issue. Now, it is a complicated issue. The Senator himself said that earlier in the day, a very complicated issue. But the potential for harm and damage, if you do not get it right, is enormous.

Mr. DODD. On both sides.

Mr. SARBANES. Is enormous.

Mr. DODD. Will my colleague agree, on both sides?

Mr. SARBANES. Not quite. Because until 1979 the SEC would not even permit forward-looking statements and yet our markets did very well. They grew. People prospered. Investments were made. The SEC would not even allow a forward-looking statement because they were so worried about what might happen to the investors.

Then people came in and made the argument, well, you know, this is difficult; we ought to be able to make some projection. And they began to try to accommodate that, which is what they have been trying to do. So we have been trying to make some changes. But you have to get it right. And when the chairman of the SEC comes in with a letter when he came to the committee, it ought to give you pause. You ought to pause. You ought to stop and think about this thing.

We ought not to have to enact something, then have devastation happen to investors and then come back and try to get it right, I say to my friend.

Mr. DODD. If my colleague will yield on that, we are already seeing—the reason the bill exists at all is because of the kind of devastation that can occur here. And so we are trying to strike that balance here.

Mr. SARBANES. That is right. And we have to strike the balance in the right place. That is all I am saying to my distinguished friend.

Mrs. BOXER. If I may reclaim my time at this point, I have enjoyed the give and take but I am bringing it back to real people. And my friends can talk all they want about safe harbor and all that. Let me tell you what I am talking about.

I used to be a stockbroker, I say to my friend, and I took that job very seriously. And I had a lot of widows and they came into me and, God, I worried. I am not concerned about the good people that my friend from Connecticut talks about. I want to help them. I want to protect them from frivolous lawsuits. I wish to also, however, say while I am doing that I do not want to hurt the average investor, and they can tell you from today until tomorrow it has nothing to do with the Keating case. Fine, they can say it all they want. But I will prove it as we go through this debate. But I wish to take you back to what happened to real people. This is just one case. There are many. I will show you another article behind here.

''Regulatory Alarms Ring on Wall Street'' New York Times, Friday June 9, 1995:

With the frenzy of merger deals and takeover battles these days, it seems like old times on Wall Street in more ways than one. Securities regulators say they are opening investigations into insider trading at a rate not seen since the mid 1980's, the era in which Ivan Boesky, who went to jail for trading on inside information, became a household name.

The point I am trying to make, my friends, yes, I want to have a safe harbor. I voted for the safe harbor that was in the Dodd-Domenici bill. And my friend from Connecticut said, well, we have moved past that. We can do better.

I think what was in the Dodd-Domenici bill made sense to give this to the SEC and let them develop a safe harbor. They know more than any of us.

Mr. DODD. Will my colleague yield on this one?

Mrs. BOXER. Yes.

Mr. DODD. The Senator is absolutely correct. I asked a year and a half ago. A year and a half ago I said to the SEC, in response to the letter by the chairman, a year and a half ago I said, ''Look, let's let you do it. Would you get some answers back.''

Month after month we inquired: What are you going to do on this? We would like to know. A year and a half went by and the SEC basically, because they wanted no change whatsoever, refused to provide any response. I say that to my colleague in frustration. We have had this happen with other agencies. They were not interested in doing this at all, despite their claims to the contrary. That is why we put the provision in here. Frankly, I would have preferred that they would have done it. But, frankly, after a year and a half, the patience of a Senator runs out when an agency refuses to respond.

Mrs. BOXER. I say to my friend, I know of his good faith and his good will and his good patience, but you know what? I think it is dangerous: Well, we tried and they did not do it, so we are going to write this our way.

I was in the House when we started the whole mess with the S&L's. Everyone thought: We can handle it; we know what is best; we will regulate them. Great. We do not need the agency to tell us how to do it. We are going to legislate.

I say to my friend from Connecticut, whom I admire—and we are friends, and we agree on 98 percent of the things around here—on this particular case, I hope he can get some more patience because I am a little concerned about the direction, and it is not just me. It is list after list of consumer groups and senior groups and securities administrators. They have no ax to grind. They are scared for the investors.

We do not want to go too far. We should find that balance. We should crack down on frivolous lawsuits, but let us be careful.

The point I am making with this, as my friend from Maryland pointed out, there is a tougher standard now. That is the whole point of the bill. Let us not play games with it. It is a tougher standard to meet, on purpose. The Senator himself has said, others have said we are worried about these suits against good, decent people and we are raising the bar; we are making it tougher.

What I am suggesting is if in connection with a forward-looking statement there is insider trading and it is clear and convincing and everyone knows it because they have to file it, then that should meet the standard right away, and the case moves over.

That is all I am saying. I hope I can work with my friend from Connecticut. I think when he looks at it he is going to think this is good. He does not want to protect people who make these statements; they are false; they dump their stock.

You know what happened? All the people in here that bought it on the basis of this lost so much. And I think there are ways we can work together to strengthen this bill so that when we have this connection—by the way, it happens many, many times with this insider trading, with these false statements, and the public gets it in the neck. And now they have to meet a higher standard.

And my friend from New York, I do not agree with him on this business about choosing the attorney. Now, in this bill we say the richest person, the person with the most invested gets to pick the attorney.

Mr. D'AMATO. If I might I ask, does the Senator mean to tell me that, for example, the pension manager of the city of New York, a $20-some-odd billion fund, should not be given greater latitude given the magnitude of the investment they manage than a professional plaintiff who buys 10 shares of stock and who is retained basically by a lawyer who rushes to file a suit? You would not want to give to the pension

managers the ability to have a greater say in who is selected when half of the dollars lost are invested by pension funds?

I would say I would rather have that any time. So when you say who is going to pick the lawyer, I would rather have people who have a real stake, who really invested billions of dollars, who really have something at risk, pick the lawyer. Than entrepenurial lawyers who simply watch for the stock to move 5 points one way or the other way. The Senator feels one way, I feel the public needs to be protected, and the way to protect the stockholders, the little people is to give them a say. They do not get a say now. They absolutely do not. What is going on now is a travesty.

Mrs. BOXER. Well, I assume that was a question, and so I will attempt to answer it this way. I say to my friend, we have a disagreement, and so does the SEC. They do not agree. They want to work on this provision. Just to say because someone has the most money, that is the end of it, they get to pick the lawyer, I think is a problem.

If you look at the Keating case, by the way, it is very interesting because in some of these cases, as the SEC pointed out in their recent communication, it may well be that the largest stockholder is somehow in cahoots with the fraudulent individual.

Now, I would rather give—

Mr. D'AMATO. Are you really suggesting—

Mrs. BOXER. May I finish my point, I say to my friend? I so admire my friend's tenacity, but let me finish my point and then I will be so happy to yield. Two people from Brooklyn, and I know it is hard. Two people from Brooklyn, I know it is hard. I want to yield to my friend.

Mr. D'AMATO. You do not have to.

Mrs. BOXER. I would like to remember my point, which is that under the current law, the judge gets to make the decision based on who is the most competent lawyer. I would assume judges are not dumb. They know if there is a phony plaintiff. I think that is another area on which we can perhaps compromise that the SEC has found problems with.

My colleagues will be glad to know that I am reaching the end of my remarks tonight. I know my chairman is absolutely thrilled with that, but I want to point out that I was yielding to many of my colleagues throughout this time. I wanted to do that. I think we have some legitimate differences.

Look, I only have one goal here. This is a tough issue for me. I represent so many wonderful companies who are complaining about this. I want to resolve this in the right way. I represent so many investors that got bilked.

Why do I represent all these people? Because I come from the largest State. I have 32 million people. I have thousands and thousands of investors, thousands of companies, and I want to be able to support a bill that strikes the balance that my friend from Connecticut talked about.

I think this bill, in its current form, does not do that. Now, I am not the only one to say that. Respected people in this Senate have said it tonight, people like DICK BRYAN, people like PAUL SARBANES. These are not people who do not know their facts. These are fair people.

We have a list of people who look after consumers, who look after investors who are begging us to fix this bill. I want to make sure that when this process ends, we have adopted some amendment, we have made sure that we do not have unintended consequences. We certainly had them in the S&L debacle. Not one of us ever dreamed we would have the problems we had when we deregulated.

Please, please view my comments tonight in the spirit in which they are offered. I want to be able to support a bill that does the right thing, but let us heed what Arthur Levitt and the SEC is saying in regard to the safe harbor, in regard to joint and several, in regard to the statute of limitations, in regard to the provisions regarding selecting an attorney. These are complicated matters, but the bottom line for me is making sure we protect the investors and that we protect the good business people, and if we do the wrong thing, we could be very, very sorry.

So let us proceed with caution, with comity. I hope we can improve this bill, and I look forward to working with my colleagues on the amendments that will be offered.

I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I will be brief considering the late hour.

I cannot let go unchallenged the statement that would imply that somehow this legislation will open up the door for people like Charles Keating to do the kinds of things that he did. This legislation does not deal with the criminal law or criminal conduct.

This bill does deal with the civil suits which are being brought and stating that there has to be a showing of intent to cause harm when making forward statements. These forward statements are defined in a very limited fashion, they include only projections. In order for a statement to be a projection, the company must state that it is a projection and warn investors that these projections may not come true.

If we want companies to be able to make these projections, and most people agree that it is in the consumers interest that they make them, then you have to give them this protection against frivolous suits. The question of who should represent the people, is not, in my opinion, a question of rich investors trampling the concerns of small investors. We are trying to give pension funds which operate on behalf of millions of people, many of whom are in the public sector, more control over their suits. We want to address more investors' concerns, not fewer. That is what we are attempting to do with this legislation.

Fraudulent conduct is not protected by the safe harbor section in this bill. This bill specifically excludes from protection any statements made with the expectation, purpose, and intent of misleading investors. If you are trying to mislead your investors you do not get protection. It is designed to protect honest companies from abusive suits.

There will be amendments to attempt to improve on the language of the bill. We will have exhaustive debate on all the issues on which my colleagues have concern and we will have votes on those amendments.

I just do not think it is fair to bring up the cases of Charles Keating or Crazy Eddie in which criminal violations were committed and which have absolutely no relation to the provisions in this legislation. One could easily assume when they hear the names of these outstandingly monstrous cases that are indelibly imprinted on so many people that somehow we are going to open the door to these kinds of actions. That is just not fair, and it is not an accurate representation of what we are attempting to do here. Although I certainly believe that reasonable people can disagree, as is their right, but I do not believe these analogies are correct or fair, with respect to this legislation.

Finally, I will conclude by saying that I did not sponsor this legislation, because I thought that the initial provisions of the legislation would have precluded and made it impossible for many people who are truly wronged to bring a suit. It was only after we were able to craft a compromise and some of the most onerous provisions, both of the original legislation and of the draft, were dropped, did I sponsor this bill.

For example, along the way, there was thought that an intentional misstatement would be protected in the safe harbor if a person did not rely upon it, which meant that somebody could actually deliberately distort the facts and could not be sued unless the person who brought the suit actually read that statement.

I could not support that, and I insisted that provision in the draft be dropped. We now have a provision which says only that there has to be an intentional misstatement.

It is in that spirit that we crafted an agreement. I might point to the House bill which has loser pays provision. We do not have a provision like that, but, yes, we do have a provision that says the courts shall ascertain, upon a dismissal of a suit, whether or not there has been an abuse, because too many of my colleagues in the law have brought these suits because it is an easy thing to get a company to settle. And that is not what the judicial system should be about, to wring out settlements from

people because they have wealth or because they cannot stand the litigation that might hurt them for 2 or 3 years; litigation that is meritless, or will keep them from doing business or obtaining the necessary financing. That is simply wrong. So, yes, we have sought to change that.

Do we seek to change that to disadvantage people? No, but to make the system operate on the basis that it should, to protect the truly aggrieved, to give them the right to sue, and to give the people who really lose the ability to decide who is going to represent them. A lawyer who finds his plaintiffs by pressing a button on a computer and calling up his list of investors with 10 shares in any particular company should not speak for the class of defrauded investors. That is wrong and is making a mockery of the system. That is why people are angry. The business community is absolutely right when they say we need fundamental change.

As I have said, I initially had great reservations about this legislation. My friend Senator DODD knows that, as does Senator DOMENICI. I studied this legislation and became convinced that many of the original reforms were necessary, while others, I felt went too far. I mention this to explain why I have not been a cosponsor—because I wanted to achieve a balance. When you have balance, there are parties on both sides who are not happy because, unfortunately, they all want their side to be more balanced. Some want loser pays. Some want a larger safe harbor; they would like companies to have no responsibility and no ability for anyone to sue them. Well, that is wrong. Of course on the other side, some of the lawyers want to be able to bring suit on anything that moves and some things that do not. They do not want to have accountability. The judges do not want to have to finding. They are overburdened and overworked, sometimes they have a year or 2-year backlog of cases. Here is Congress telling them they have made those findings, that they are in the public interest and the public has to be served. We are suffering in this country as a result of these frivolous lawsuits.

So one way for us to find the balance is ask the Judges only to look at cases which are dismissed, to find out whether or not sanctions should be brought. We hope that will help deter frivolous suits. Maybe after one or two sanctions are imposed we will have sent a message to those who are abusing the system.

Mr. President, I hope that we can proceed on this tomorrow. As I understand it, Senator SHELBY will lay down the first amendment. We will come into session at 9 o'clock. We will move to this bill at 9:30, when Senator SHELBY will offer his amendment dealing with proportionate liability, and I hope to hear debate from both sides. We will vote at 10:55.

If there is nothing further——

Mr. SARBANES. Mr. President, I will be very quick. I think we have had a good opening debate. I very strongly commend to my colleagues the very thoughtful and perceptive statements that were made by Senator BRYAN and Senator BOXER. I hope Members will review those very carefully.

We have to focus this debate on what the real issues are that divide us. There are provisions in this legislation—I was listening to the chairman of the committee talking just now, and he mentioned a number of provisions that we are not contesting. We accept those and think they are designed to deal with some abuses that have been taking place. But we do want to get the focus on other provisions where we think a proper balance has not been struck, where we think investors will be jeopardized, and where we think immunity is being provided to potential wrongdoers that ought not to be provided to them.

This is a very complicated question, there is no doubt about it. My good friend from New York, the chairman now, got very excited about the appointment of the lead plaintiff in a class action. Well, let me read you what the SEC said about that, and it is not all black and white, I admit that. Here is what they said:

> One provision of section 102 requires a court generally to appoint as lead plaintiff the class member that has the largest financial interest in the case. While this approach has merit, it may create additional litigation concerning the qualification of the lead plaintiff, particularly when the class member with the greatest financial interest in the litigation has ties to management or interests that may be different from other class members.

Now, I am not pretending this is simple. There is the problem. The SEC has stated this, and we need to think about it and address it. We may be making a mistake. I am sort of puzzled a bit by the absolute certainty of the people on the other side of this. I think this is complicated. I am not absolutely certain that the position I am advocating anticipates all of the problems. But, clearly, outside observers, in many respects, are far more knowledgeable than we are—the State securities regulators, the chairman of the SEC, and the finance officer people have all come in here expressing a lot of misgivings. One group said, ''We think you need these amendments. If you get these amendments in, we will take a different view of the bill. Without these amendments, we oppose the bill.'' They, in effect, are saying they recognize that there are other aspects or features of the bill that are acceptable or desirable.

As I said earlier, parts of this bill are desirable; parts of it are not desirable. We need to address, in my judgment, the undesirable parts. If we can do that, I think we can end up strengthening the bill, changing its thrust, achieving a better balance, and eliminating, hopefully, the differences between us.

As the very able Senator from California pointed out, that is the quest that she is on now, as we come to address this legislation.

So, again, I strongly commend to my colleagues the opening statement of Senator BRYAN and the opening statement of Senator BOXER. I say to them that this is a complicated issue. They need to consider it very carefully, because we will have to live with the consequences of this thing. As one commentator observed, ''The pendulum had swung too far toward the lawyers, and now it is swinging too far the other way. Unfortunately, some major investor frauds may have to take place before it again moves back toward the center.''

I want to get it to the center before we send it out of here, so the major investor frauds will never happen. I do not want a situation where we send it out of here, then the major investor frauds happen, and everybody comes back and says, oh, my goodness, we overreached. Let us correct it now and avoid it. Get the pendulum, as this says, in the center to begin with.

I thank the Chair.

Mr. DODD. Mr. President, very briefly, I do not debate what my colleague has said. Some of us have been at this for 4 or 5 years trying to strike a balance.

As I pointed out earlier today, the first couple of years, any suggestion about doing anything in this area was greeted, in many quarters, with total hostility. A threshold has been reached in the last year or so now, and the people are finally agreeing that the present system is not working well. And it has taken some time to get people to agree to that particular position.

As my colleague from Maryland knows far better than I, as you try and put together a legislative package here, it is in a complicated area where, unfortunately, only a relatively small number of people get involved in issues like this. The galleries are empty.

Not for lack of people who are probably in the building covering these matters, but this does not help itself to the 30-second sound bite, to the 30-second campaign ad or a bumper sticker. These are highly complicated areas.

Striking the balance is truly my interest here. In the years I have spent as chairman of the Security Subcommittee and as ranking minority member, I have authored many pieces of legislation in this area, and forever keeping in mind confidence.

Investor confidence. Confidence in our markets is what has made our markets so attractive to people. Why people, as the Senator from Maryland pointed out, why people come from around the world. It is not just because the dollars are here, but the confidence they have in our markets.

I think there has been an erosion in that confidence because of some of the activities we have seen. Trying to strike that balance is truly the interest of this Senator, the Senator from

New York, the Senator from New Mexico, and others.

There will be some amendments. Some of them, as my colleagues know, I support. The statute of limitations, I support that. My colleague from New York wants that. I wanted to keep that in the bill.

We will be together on a few of these things. When we deal with the legislative process, it is darn near impossible to strike that perfect balance all the time.

The Senator from Maryland is correct. Anyone who sits here and says with absolute certainty they know what will happen as a result of legislation they pass, has not been here very long, or never been in the legislative process. We know the system is not working well. We are trying to correct it.

Obviously, how the markets respond, what happens down the road in many ways, we will have to deal with as it occurs. Maybe we have not gone far enough. Maybe we have gone far in some areas.

No one here claims perfection. Clearly, we need to address a present situation that is not working. My hope and desire over the next 2 or 3 days, we have the four, five, six amendments that I think we will have, that possibly we can address some of these issues, modify the bill if that is necessary, in a few areas to accommodate some of these interests, but move the process along so we have a chance to address the underlying concerns people have raised about the present situation.

I thank my colleague for listening. I yield the floor.

MORNING BUSINESS

Mr. D'AMATO. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business with Senators permitted to speak for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on the Judiciary and a withdrawal.

(The nomination and withdrawal received today are printed at the end of the Senate proceedings.)

NOTICE OF THE TERMINATION OF THE SUSPENSION OF LICENSES FOR THE EXPORT OF CRYPTOGRAPHIC ITEMS TO THE PEOPLE'S REPUBLIC OF CHINA—MESSAGE FROM THE PRESIDENT—PM 57

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States; which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

Pursuant to the authority vested in me by section 902(b)(2) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101–246) (''the Act''), and as President of the United States, I hereby report to the Congress that it is in the national interest of the United States to terminate the suspension under subsection 902(a)(3) of the Act with respect to the issuance of licenses for the export to the People's Republic of China of U.S. Munitions List articles, insofar as such suspension pertains to export license requests for cryptographic items covered by Category XIII on the U.S. Munitions List.

License requirements remain in place for these exports and require review and approval on a case-by-case basis. The Department of State, in consultation with the Department of Defense and other relevant agencies, will review each request, including each proposed use and end-user, and will approve only those requests determined to be consistent with U.S. foreign policy and national security.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 22, 1995*.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1039. A communication from the Chairman of the Interstate Commerce Commission, transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on Commerce, Science, and Transportation.

EC–1040. A communication from the Chairman of the Interstate Commerce Commission, transmitting, pursuant to law, a report relative to transportation rates; to the Committee on Commerce, Science, and Transportation.

EC–1041. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report on the International Commission for the Conservation of Atlantic Tunas; to the Committee on Commerce, Science, and Transportation.

EC–1042. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report relative to eligible export vessels; to the Committee on Commerce, Science, and Transportation.

EC–1043. A communication from the Under Secretary for Oceans and Atmosphere, Department of Commerce, transmitting, pursuant to law, the report on the National Oceanic and Atmospheric Administration's Chesapeake Bay Office; to the Committee on Commerce, Science, and Transportation.

EC–1044. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on the Electric and Hybrid Vehicles program for fiscal year 1994; to the Committee on Commerce, Science, and Transportation.

EC–1045. A communication from the Administrator of the Federal Aviation Administration, transmitting, pursuant to law, the report on developing and certifying the traffic alert and collision avoidance system for the period January 1 through March 31, 1995; to the Committee on Commerce, Science, and Transportation.

EC–1046. A communication from General Counsel of the Department of Commerce, transmitting, a draft of proposed legislation entitled ''The Coastal Zone Management Act Reauthorization Amendments of 1995''; to the Committee on Commerce, Science, and Transportation.

EC–1047. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the report relative to the International Energy Program; to the Committee on Energy and Natural Resources.

EC–1048. A communication from the Chairman of the Federal Energy Regulatory Commission, transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on Energy and Natural Resources.

EC–1049. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report relative to the National Natural Landmarks; to the Committee on Energy and Natural Resources.

EC–1050. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report on the operation of the Colorado River; to the Committee on Energy and Natural Resources.

EC–1051. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report on the continuing studies of the quality of water in the Colorado River; to the Committee on Energy and Natural Resources.

EC–1052. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC–1053. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC–1054. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC–1055. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC–1056. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the report on the Youth